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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,629	03/22/2004	Billy Yang	PLI - 1192	1465

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EXAMINER

BELLINGER, JASON R

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,629

Applicant(s)

YANG ET AL.

Examiner

Jason R. Bellinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 and 9-13 is/are allowed.
- 6) ☒ Claim(s) 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Drawings

1. The drawings were received on 18 May 2005. These drawings are approved.

Specification

2. The abstract of the disclosure is objected to because it contains legal terms (see below). Correction is required. See MPEP § 608.01(b).

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "consists", "means", and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

4. Claims 8 and 14 are objected to because of the following informalities: In line 3 of claim 8, the term "speed" following the term "different" should be deleted for grammatical clarity.

A comma (,) should be inserted at the end of line 7 in claim 14 for grammatical clarity.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. See below.

7. Claim 14 recites the limitation "the cap bearing" in lines 8-9. There is insufficient antecedent basis for this limitation in the claim. This limitation has not been previously set forth in the claim.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan in view of Hettinger. Yuan shows a spinner 2 for a wheel *W* having a non-rotating cap 25. A spinner shaft 23 is attached to the wheel *W* (through housing 21), and is free to rotate independently of the wheel *W* (due to spinner bearing 24). A spinner 20 is attached to the shaft 23. The non-rotating cap 25 is attached to the spinner shaft 23 (through a cap

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bearing 24), and includes a counter-weight 26 so that when the wheel *W* is rotating, the non-rotating cap 25 remains in a relatively fixed position without rotating.

Yuan does not show a bladed spinner attached to the spinner shaft. Yuan does show a spinner disc 27 attached to the spinner shaft 23 (through the non-rotating cap/disk 25). This spinner disc 27 may include decorative indicia 271 thereon.

Hettinger teaches the use of a spinner having a spinner shaft 28 on which a bladed spinner 10 (the blades being generally indicated at 36) is mounted. Therefore from this teaching, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide blades on the spinner of Yuan as a substitution of equivalent decorative indicia, for the purpose of changing the aesthetic appearance of a vehicle wheel.

Allowable Subject Matter

10. Claims 1-7 and 9-13 are allowable over the prior art.
11. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
12. Claim 14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

13. Applicant's arguments filed 18 May 2005 have been fully considered but they are not persuasive. The Applicant argues that the invention of Yuan is "different in structure and points of attachment" that that of the instant invention. However, device of Yuan still contains structure that meets the limitations of claim 15 as set forth in paragraph 9 above.

14. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the Applicant argues that there is no reason to combine the teachings of Hettinger with the device of Yuan, stating that Yuan would have no reason to incorporate Hettinger's disc cover, stating that to do so would be a radical change. First, it should be noted that the device of Yuan contains an area of free space located between the spinner 20 and the outer transparent cover 28 (see Figure 4). Therefore, indicia that contain elements that protrude from the surface of the spinner are not precluded from the device of Yuan. The cover of Hettinger resembles a pinwheel, which is well known as a common children's toy, and could serve as a decorative indicia

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without drastically altering the device of Yuan. In fact, any form of decorative feature that would fit within the free space of the device of Yuan is not precluded from being used.

The Applicant further argues that the "Hettinger's disc cover is a far cry from applicant's **spoked or specifically bladed** spinner". The Applicant argues that the scoops 36 of Hettinger are not blades and that if "there were no backing or a flat disc behind" the scoops 36 (they would not operate as scoops to catch air". The definition of the term "bladed" is "having blades". The definition of the term "blade(s)" is "...something resembling the blade of a leaf: as **a**: the broad flattened part of an oar or paddle **b**: an arm of a screw propeller, electric fan, or steam turbine **c**: the broad flat or concave part of a machine (as a bulldozer or snowplow) that comes into contact with the material to be moved..." (See attached print out from the Merriam-Webster online dictionary). The scoops 36 of Hettinger meet the definition of a "blade".

The term "spoke" is defined as "a: any of the small radiating bars inserted in the hub of a wheel to support the rim, b: something resembling the spoke of a wheel" (See attached print out from the Merriam-Webster online dictionary). The scoops 36 of Hettinger resemble spokes due to the fact that they extend radially from the center of the wheel hub to the rim.

15. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a separate bladed spinner located on the spinner axle) are not recited in the

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rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 15 does not specify that the bladed spinner is a separate element that is independently rotatable with respect to the non-rotating cap.

Conclusion

16. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason R. Bellinger whose telephone number is 703-308-6298. The examiner can normally be reached on Mon - Thurs (9:00-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason R Bellinger
Examiner
Art Unit 3617



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